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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,337	08/19/2003	Frederick J. Kelly		3971

7590 08/31/2004

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EXAMINER


VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/643,337	<b>Applicant(s)</b> KELLY, FREDERICK J.	
	<b>Examiner</b> Andrea M. Valenti	<b>Art Unit</b> 3643	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 9 June 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,534,129 to Stuckey in view of U.S. Patent Pub. No. US 2003/0033750 to Gunderman et al.

Regarding Claim 15, Stuckey teaches a plant support device for aiding in supporting climbing plants, said device comprising: an upright (Stuckey #10) having a profile and two ends each of said uprights having a length and a plurality of holes (Stuckey Fig. 4A #21) along said length, said holes being arranged in a line along said length and spaced a predetermined distance apart; a hoop (Stuckey #11), having of clamping mechanisms for attaching said hoops to said uprights, said plurality of clamping mechanisms (Stuckey #12-1 and 13-1) on each hoop being of the same number as said uprights, the clamping mechanisms having a first (Stuckey Fig. 2B #13-1) part attached to said hoop and having at least a portion of its shape conforming to the profile of said uprights and a second (Stuckey Fig. 2B #12-1) fitted part which is separate from said first part and shaped to conform to the profile of said uprights, said first part of said clamping mechanisms further comprising a knob (Stuckey Fig. 2B #13) positioned within said first part, said knob being sized and shaped to correspondingly

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engage said plurality of holes to lockingly attach said hoops to said uprights; said second fitted part further having securing means (Stuckey Fig. 2B #12) for attaching said second fitted part to said first part whereby said hoops are removeably attached to said uprights by manipulating said securing means; and modular construction so as to allow for disassembly and compact storage when not in use.

Stuckey is silent on one of said ends being a bent end having multiple bends to form a substantially horizontal portion and a vertical portion, said one bent end being of greater dimension than the other end whereby the increased dimension provides a more stable base for attachment to the ground and prevents tipping of the support device and plant in a moderate wind; a plurality of hoops; a plurality of clamping mechanisms and uprights. However, Gunderman teaches a plant support with a plurality of hoops; a plurality of uprights, and a bent end (Gunderman Fig. 1 #12, 16, 18, and 19). It would have been obvious to one of ordinary skill in the art to modify the teachings of Stuckey with the teachings of Gunderman since the modification is merely the duplication of an existing feature for a multiple effect to provide a more stable support and support over the length of the plant. Also, the bent base of Gunderman provides a more stable ground engagement.

Regarding Claim 16, Stuckey as modified teaches the securing means are hardware to attach said first part and said second fitted part together (Stuckey Fig. 2B).

Regarding Claim 17, Stuckey as modified teaches the uprights are of a set length and made of a single unitary construction (Stuckey #10), and each of said hoops are made of a single unitary construction (Stuckey Fig. 10 #11).

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Regarding Claim 18, Stuckey as modified is silent on the hoops are made in a plurality of geometric shapes and sizes to accommodate various size and shaped plants. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely a change in shape/size performing the same intended function modified depending on the size and the shape of the plant requiring support.

Regarding Claim 19, Stuckey as modified is silent on each of said uprights are made of several smaller individual pieces interconnected to form a maximum length; and each of said hoops is made of smaller portions interconnected to form various shapes and dimensions. It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since it is old and notoriously well-known to manufacture modular vertical assemblies to adjust the height as the plant grows or for efficient storage.

Regarding Claims 20-22, Stuckey as modified teaches the uprights, hoops and clamping mechanisms are made of metal, but is silent on plastics or fiberglass. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the selection of a known material for intended use to meet certain manufacturing parameters such as cost and availability of raw materials.

Regarding Claim 23, Stuckey as modified teaches the first part of said clamping mechanism is integrally formed within said hoop (Stuckey Fig. 2B #13-1).

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Claims 15-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Pub. No. US 2003/0033750 to Gunderman et al in view of U.S. Patent No. 1, 517,101 to Borger.

Regarding Claim 15, Gunderman teaches a plant support device for aiding in supporting climbing plants, said device comprising at least three uprights (Gunderman Fig. 1 #16), each of said uprights having a profile, each of said uprights having two ends, one of said ends being a bent end having multiple bends to form a substantially horizontal portion and a vertical portion (Gunderman Fig. 1 #18 and 19); a plurality of hoops (Gunderman Fig. #12 and 14); said one bent end being of greater dimension than the other end whereby the increased dimension provides a more stable base for attachment to the ground and prevents tipping of the support device and plant in a moderate wind.

Gunderman is silent on a plurality of holes and clamping mechanisms. However, Borger teaches holes along a length (Borger Fig. 1 #12); each of said hoops having a plurality of clamping mechanisms for attaching said hoops to said uprights, said clamping mechanisms having a first part attached to said hoop (Borger Fig.1 #1) and having at least a portion of its shape conforming to the profile of said uprights and a second fitted part (Borger Fig. 1 #15) which is separate from said first part and shaped to conform to the profile of said uprights, said first part of said clamping mechanisms further comprising a knob (Borger Fig. 1 #12) positioned within said first part, said knob being sized and shaped to correspondingly engage said holes to lockingly attach said hoops to said uprights; said second fitted part further having securing means (Borger

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Fig. 3 #21 and 22) for attaching said second fitted part to said first part whereby said hoops are removeably attached to said uprights by manipulating said securing means. It would have been obvious to one of ordinary skill in the art to modify the teachings of Gunderman with the teachings of Borger at the time of the invention since Borger merely teaches an alternate equivalent means of attaching the hoops to the uprights in a modular manner for ease of disassembly for compact and efficient storage.

Claim 16, Gunderman as modified teaches securing means are hardware to attach said first part and said second fitted part together (Borger Fig. 3 #21 and 22).

Claim 17, Gunderman as modified teaches the uprights are of a set length and made of a single unitary construction, and each of said hoops are made of a single unitary construction (Gundermans Fig. 1 #12 and 16).

Regarding Claim 18, Gunderman as modified is silent on the hoops are made in a plurality of geometric shapes and sizes to accommodate various size and shaped plants. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely a change in shape/size performing the same intended function modified depending on the size and the shape of the plant requiring support.

Regarding Claim 19, Gunderman as modified is silent on the uprights are made of several smaller individual pieces interconnected to form a maximum length; and each of said hoops is made of smaller portions interconnected to form various shapes and dimensions. It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since it is old and notoriously well-known to



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manufacture modular vertical assemblies to adjust the height as the plant grows or for efficient storage.

Regarding Claim 20-22, Gunderman as modified teaches the uprights, hoops and clamping mechanisms are made of metal, but is silent on plastics or fiberglass. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the selection of a known material for intended use to meet certain manufacturing parameters such as cost and availability of raw materials.

Regarding Claim 23, Gunderman as modified teaches the first part of said clamping mechanism is integrally formed within said hoop (Borger Fig. 1 #1).

### ***Response to Arguments***

Applicant's arguments with respect to claims 15-23 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,193,774; U.S. Patent No. 5,785,447; U.S. Patent No. 6,575,652; U.S. Patent No. 3,524,627.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP



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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

25 August 2004



Peter M. Poon  
Supervisory Patent Examiner  
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